UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

JAK PRODUCTIONS, INC., and GROUP CONSULTANTS, INC.,	)	
Plaintiffs,	)	
v.	)	**CIVIL ACTION NO.** 2:15-0361
ROBERT BAYER,	)	
Defendant.	)	

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

Plaintiffs, JAK Productions, Inc. ("JAK") and Group Consultants, Inc. ("GCI") (collectively referred to as "Plaintiffs"), by counsel, for their Verified Complaint for Injunctive Relief and Damages against Defendant, Robert Bayer ("Bayer" or "Defendant"), state as follows:

THE PARTIES & PRINCIPAL ACTORS

1. JAK Productions, Inc. ("JAK") is an Indiana corporation with its corporate offices located at 3060 Peachtree Road, Suite 875, Atlanta, Georgia 30305.

2. GCI is a Delaware corporation with its corporate offices located at 3060 Peachtree Road, Suite 875, Atlanta, Georgia 30305.

3. JAK and GCI operate call centers, two of which call centers are located in Parkersburg, West Virginia in Wood County. JAK and GCI perform telephone fundraising for non-profit organizations at their call centers, including their Parkersburg call center.

4. Bayer is an individual residing at 32 Arrowhead Drive, Williamstown, Wood County, West Virginia 26187.

5. Residential Programs, Inc. ("RPI") is a Delaware corporation with its corporate offices located in Eatontown, NJ. According to its website, RPI was formed by a group of entrepreneurially minded veterans from several not for profit fundraising companies.

6. RPI represents itself to the public as a company that "offer[s] diverse skill sets in all aspects of the fundraising process, from Call Center Management and Operations, to Direct Mail, Caging Services and Financial Reporting and full suite Creative Services."

7. RPI is a direct competitor of JAK and GCI in the non-profit telemarketing business.

8. JAK and GCI employed Bayer as their Regional Manager from February 2010 to October 19, 2012, and then promoted him to Director of Call Center Operations (and he worked in that capacity until March 28, 2014), pursuant to an "Employment Contract" dated February 24, 2010 (hereinafter referred to as the "Employment Contract"). (*See* Employment Contract attached hereto as **Exhibit 1**).

9. RPI has employed Bayer from April 2014 to the present as its Operations Manager in the Parkersburg, West Virginia area. (*See* April 10, 2014, LinkedIn job new job announcement for Bayer, attached hereto as **Exhibit 2**).

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter and the parties hereto. Jurisdiction of this cause is based on 28 U.S.C. § 1332(a)(1) in that this is an action between parties that are citizens of different states, and the amount in controversy exceeds $75,000.00, exclusive of interest and costs. Federal question jurisdiction under 28 U.S.C. § 1331 also exists in this case as one of Plaintiffs' counts against Defendant arises under the Computer Fraud & Abuse Action, 18 U.S.C. 1030(g).

11. Venue exists in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that Defendant resides in this District and a substantial part of the events or omissions giving rise to this action occurred in this District.

FACTS COMMON TO ALL COUNTS

12. As a Regional Manager and Director of Call Center Operations for JAK and GCI, Bayer oversaw the management of JAK and GCI's telemarketing call centers located in Parkersburg, WV, Fairmont, WV, and Portsmouth, OH.

13. Bayer's job duties for JAK and GCI included, but were not limited to, the following:

> Preparing budgets; analyzing budget variances; determining call center operational strategies by conducting assessments, performance reviews, capacity planning, and cost/benefit analyses; manage call center human resources needs; manage the enforcement of call center policies and procedures; establishing production, productivity, quality, and other standards for call centers; contributing information and analysis to organizational strategic plans and reviews; maintaining and improving operations of call centers by monitoring system performance; identifying and resolving call center problems; preparing and completing call center action plans; opening new call centers; closing non-profitable call centers; staffing call centers; training employees; and, manage process improvement and quality assurance programs.

14. Over the course of his employment with JAK and GCI, Bayer had significant contact with all of JAK and GCI's employees at their call centers located in Parkersburg, WV, Fairmont, WV, and Portsmouth, OH, and became familiar with the affairs of JAK and GCI, including their business practices, clients and customers, business relationships, the needs and requirements of their customers and prospective customers, fees, rates, price information and other confidential information pertaining to JAK and GCI's business.

15. As a trusted employee of JAK and GCI, Bayer had access to and knowledge of JAK and GCI's most valuable confidential and trade secret information. On this, the Employment Contract states as follows:

> 9. Acknowledgment. Employee recognizes that EMPLOYER's business involves all aspects of fund-raising on behalf of public safety and civic associations, including but not limited to police and firefighter associations. Employee acknowledges that:
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> a. EMPLOYER's products and services are highly specialized;
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> b. EMPLOYER has a proprietary interest in the documents and information regarding its methods of development, customers, customer information (including but not limited to contract expiration dates, conditions, rates, needs and requirements of customers), contributors, contributor information (including but not limited to their names, addresses, telephone numbers, past donation amounts, future contact dates, and the organizations to which they contributed), computer software, sales, pricing, costs, and the specialized requirements of EMPLOYER's operation, and other trade secrets;
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> c. Such information is highly confidential and possesses a commercial value from not being generally known;
>
> d. Employee will develop, at EMPLOYER's expense, direct business relationships ("goodwill") with customers of EMPLOYER, and that such goodwill as he/she shall develop with customers shall at all times be the intangible property of EMPLOYER;
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> e. Due to the responsibilities and trust inherent in Employee's position with EMPLOYER, Employee will have access to EMPLOYER's proprietary, trade secret and confidential information during the term of his/her employment.

(Employment Contract, ¶ 9).

16. Bayer agreed as follows with regards to JAK and GCI's trade secret and confidential/proprietary information:

> 10. EMPLOYER Trade Secret Information. Employee hereby understands and agrees that Employee will, at all times, conform his/her conduct to the requirements of applicable trade secrets laws, including but not limited to the West Virginia Uniform Trade Secrets Act, W. Va. Code §§ 47-22-1, *et seq*. Employee will not misappropriate (e.g., use or disclose to any third party) any trade secret of EMPLOYER. Employee recognizes that the penalties for a trade secret violation include disgorgement of profits, payment of royalties, compensatory damages, exemplary damages, and attorneys' fees. Employee understands that he/she may ask EMPLOYER to render an opinion as to whether EMPLOYER considers certain knowledge to be a trade secret, if such a question should arise. Employee understands that upon termination of employment with EMPLOYER for any reason, Employee will continue to be prohibited at any time thereafter from misappropriating any trade secret of EMPLOYER.
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> 11. Confidential/Proprietary Information of EMPLOYER. Employee agrees that during the period of employment by EMPLOYER, and for a period of two (2) years following termination of employment, for any reason, Employee will not disclose, cause to be disclosed, or otherwise allow to be disclosed, any confidential/proprietary information of EMPLOYER that, while not a "trade secret" under the West Virginia Uniform Trade Secrets Act, possesses independent economic value to EMPLOYER from not being generally known by other persons who can obtain economic value to EMPLOYER from not being generally known by other persons who can obtain economic value from its disclosure or use. Employee understands that he/she can ask EMPLOYER to render an opinion as to whether EMPLOYER considers certain knowledge or information to be confidential/proprietary information, if such a question should arise. EMPLOYER may, formally or informally, establish, adopt, implement or utilize procedures or actions that are designed to monitor or protect EMPLOYER's confidential information, including but not limited to (1) the search of personal belongings; (2) monitoring and restricting e-mail and internet usage, including but not limited to personal opinions in any matter affecting EMPLOYER in blogs or other public or potentially public media; (3) review, scanning and inspection of any record, program or file contained in any mobile, electronic or computer device or equipment (whether owned by EMPLOYER or Employee) which was used or could have been used by Employee at any time during

> his or her employment with EMPLOYER, including but not limited to home computers, laptops and any portable device capable of storing any information; (4) monitor telephone conversations and instant messaging on any telephone owned or utilized by Employee for EMPLOYER's business; (5) review of telephone records for any telephone that was or could have been used by the Employee at any time during his or her employment with EMPLOYER; or (6) requiring Employee to divulge the true and complete intentions and/or plans of the Employee after leaving the employment of EMPLOYER, including but not limited to divulging the name and address of any future employer and the position and/or responsibilities that Employee will have at the new employer. Employee hereby acknowledges that Employee has no expectation of privacy or other rights in any such items or communications and hereby irrevocably consents, without the right to receive further notice, to any or all of these procedures or actions that may be established, adopted, implemented, utilized or enforced by EMPLOYER. EMPLOYER shall have the right to establish, adopt, implement, utilize or enforce these procedures at any time during Employee's employment with EMPLOYER and during any period in which any restrictive covenants contained in this Agreement are facially or legally applicable. Employee expressly WAIVES the right to challenge the enforceability of any of these procedures in any legal action seeking to enforce this Agreement or to recover for Employee's breach or alleged breach of this Agreement.

(Employment Contract, ¶¶ 10 and 11).

17. JAK and GCI's confidential/proprietary and trade secret information is not generally known to the public and has substantial value to JAK and GCI.

18. JAK and GCI go to great lengths to protect the secrecy of their confidential and trade secret information. For example, JAK and GCI maintain their confidential and trade secret information on their password-protected computer system and in a locked file cabinet. JAK and GCI also require all of their employees to execute agreements with confidentiality provisions.

19. The Employment Contract signed by Bayer includes confidentiality, non-solicitation and non-complete obligations on the part of Bayer that extend beyond the termination of his employment.

20. Pursuant to the terms of the Employment Contract, Bayer has an affirmative duty to keep confidential and not disclose any confidential information or trade secrets of JAK and GCI for the period of time stated in the Employment Contract. (Employment Contract, ¶ 15).

21. Bayer specifically agreed that his confidentiality obligations would survive the termination of his employment with JAK and GCI. (Employment Contract, ¶ 15).

22. The Employment Contract obligated Bayer to comply with certain non-competition requirements for eighteen (18) months after the termination of his employment. The Employment Contract provides as follows:

> a. Geographic Limitation. To the fullest extent permitted by the applicable law, for a period of eighteen (18) months after the termination of employment with EMPLOYER (for any reason, including resignation), Employee, on behalf of any entity in competition with EMPLOYER (whether as a proprietor, partner, joint venture, stockholder, director, officer, trustee, principal, agent, servant, employee, consultant, or in any other capacity, hereafter referred to as "in any capacity"), may not, directly or indirectly, engage in any fund-raising or telemarketing business within a thirty (30)-mile radius of any call center of EMPLOYER for which Employee, directly or indirectly, is responsible or involved with, during the two (2) years prior to the termination of Employee's employment with EMPLOYER. Employee understands and agrees that the term "any entity in competition with EMPLOYER" includes any business that engages in fund-raising on behalf of public safety or other civic associations, including but not limited to police and firefighter associations, and/or any business that engages in providing similar inbound and outbound telemarketing services to like clients.
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> b. Limitation on Use of Certain Information to Compete. To the fullest extent permitted by applicable law, for a period of eighteen (18) months after the termination of employment with EMPLOYER (for any reason, including resignation), if Employee receives trade secret or confidential/proprietary information from EMPLOYER, Employee, on behalf of any entity in competition with EMPLOYER, in any capacity, may not,

> directly or indirectly, use such information of EMPLOYER to compete with EMPLOYER in any geographic area where EMPLOYER competes for business, whether or not Employee had customer contact in such geographic area.
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> c. Customer Limitation. To the fullest extent permitted by applicable law, for a period of eighteen (18) months after the termination of employment with EMPLOYER (for any reason, including resignation), Employee, on behalf of any entity in competition with EMPLOYER, in any capacity, may not, directly or indirectly, solicit or obtain any business from any present customer of EMPLOYER. Employee understands and agrees that "present customer" is defined to mean any entity with whom EMPLOYER had an "ongoing business relationship" at the time of the termination of Employee's employment with EMPLOYER. An "ongoing business relationship" (specifically excluding non-competing vendor relationships) is generally understood and agreed to mean: (a) services or goods were provided by EMPLOYER to the entity during the final two (2) years of employment of Employee by EMPLOYER; (b) services or goods had been contracted for or ordered by the entity during the employment of Employee by EMPLOYER; or (c) negotiations were in progress between the entity and EMPLOYER for the providing of goods or services by EMPLOYER to the entity at the time of the termination of the employment of Employee. Employee understands and agrees that past customers and prospective customers are not "present customers" protected under the terms of this provision.

(Employment Contract, ¶¶ 8.a. - c.).

23. The non-competition provisions noted above also prohibit Bayer from soliciting any clients or customers or prospective clients or customers of JAK and GCI for eighteen (18) months. (*Id.*).

24. The Employment Contract also prohibits Bayer from attempting to hire certain current and former employees of JAK and GCI for eighteen (18) months. The Employment Contract provides as follows:

> d. "Anti-Piracy" Limitation. To the fullest extent permitted by applicable law, for a period of eighteen (18) months after the termination of employment with EMPLOYER (for any reason, including resignation), Employee will not, in any capacity, attempt to hire, engage or employ, or solicit, contact or communicate with, for the purpose of hiring, employing or engaging any person who is then an employee or commissioned agent of EMPLOYER or who was an employee of EMPLOYER at any time within the one (1) year period immediately prior thereto.

(Employment Contract, ¶ 8.d.).

25. Bayer expressly acknowledged the reasonableness of the restrictive covenant in his Employment Contract. The Employment Contract provides as follows:

> f. Reasonable Restrictions. Employee acknowledges that, as an employee of EMPLOYER, he/she will become conversant with the affairs, customers, contributors, and other confidential information of EMPLOYER. Employee acknowledges that his/her compliance with the provisions of this paragraph is necessary to protect the goodwill and other proprietary interests of EMPLOYER. The Employee acknowledges that the restricted period of time, geographic limitation, and customer limitation specified are reasonable in view of the nature of the business in which EMPLOYER is engaged and the Employee's knowledge of EMPLOYER's operations. If the scope of any stated restriction is too broad to permit enforcement of such restriction to its fullest extent, then such restriction shall be enforced to the maximum extent permitted by law. Employee hereby agrees that regardless of the actual date employment commences, this covenant is supported by adequate consideration consisting of the mutual promises set forth herein.

(Employment Contract, ¶ 8.f.).

26. Bayer agreed as follows with respect to the return of JAK's and GCI's property at the time of the termination of his employment:

> 13. Return of Property. Employee agrees to return all property of EMPLOYER, including but not limited to equipment, its methods of development, customers, customer information,

> contributors, contributor information, computer software, sales, pricing, costs, the specialized requirements of EMPLOYER's operations, and any other proprietary data or objects acquired through Employee's employment with EMPLOYER, as well as any and all copies of such items, immediately upon termination of employment. Employee also understands that at no time during or after employment, shall Employee remove or copy any such EMPLOYER information, nor use such information for personal benefit or the benefit of any other person or business entity.

(Employment Contract, ¶ 13).

27. In the Employment Contract, Bayer agreed that "[i]n the event of breach of any provisions of the Agreement, EMPLOYER shall be entitled to seek damages if determinable, injunctive relief, and, in addition to which, EMPLOYER shall be entitled to reasonable attorneys' fees incurred in the enforcement of said provisions. The remedies herein provided shall be cumulative and no single remedy shall be construed as exclusive of any other or of any remedy provided at law. Failure of EMPLOYER to exercise any remedy at any time shall not operate as a waiver of the right of EMPLOYER to exercise any remedy for the same or subsequent breach at any time thereafter." (Employment Contract, ¶ 14).

28. On or about March 28, 2014, Bayer voluntarily terminated his employment with JAK and GCI.

29. Bayer voiced his intent to voluntarily end his employment with JAK and GCI several weeks prior to March 28, 2014.

30. On March 31, 2014, counsel for JAK and GCI wrote Bayer and RPI to remind Bayer of his continuing legal duties to JAK and GCI pursuant to the Employment Contract and to advise RPI of Bayer's continuing obligations to JAK and GCI. (*See* March 31, 2014, letter to Bayer (with a copy to RPI), attached hereto as **Exhibit 3**).

31. On April 3, 2014, Bayer acknowledged receipt of the March 31, 2014, letter from JAK's and GCI's counsel and agreed that he "will be in compliance with the non-compete." (*See* April 3, 2014, e-mail, attached hereto as **Exhibit 4**).

32. Bayer did not return the laptop computer that he used during the course and scope of his employment with JAK and GCI until **after** April 2, 2014 (on or about April 4, 2014).

33. JAK and GCI conducted a forensic investigation of the hard drives of the laptop and desktop computers used in interstate commerce and communication during Bayer's employment with JAK and GCI. The initial examination performed by SullivanStrickler LLC revealed the following:

a. PST Review: Bayer routinely received JAK and GCI worked related e-mails to both his private Yahoo email account and his JAK work email account. Such emails had daily shift reports, production reports and credit card sales reports attached. These emails also had telemarketing campaign scripts attached. There was increased activity, mainly around early 2014 timeframe, where emails were sent from Bayer's private Yahoo email account to the same Yahoo email account. The content of these emails were generally attachments of a variety of things such as voice recordings (i.e., recordings of TSRs on fundraising calls for JAK and/or GCI), word documents (which appear to be mostly documents related to Bayer's personal activities) and some excel spreadsheets. Many of the emails contained work related files which could therefore now exist on other storage devices if they were opened from the private Yahoo email account on a non JAK-Production workstation.

b. Laptop Review: The Laptop used by Bayer during the course and scope of his employment with JAK/GCI had a fresh install of a Windows Operating System made on **April 2, 2014, at 10:39 PM PST**. There is a limited amount of live data (18GB) which is typical of a fresh install. Upon further investigation of the unallocated clusters (where deleted files will typically be if still in existence), there are data patterns that are commonly found on deleted drives - patterns such as Hex FF which could typically be selected as a pattern of data to overwrite all sectors of a hard drive. This type of data is often used when a storage medium is being wiped by some third party software designed to remove data. The fact that this was found in the unallocated clusters of the hard drives suggests to us that the Laptop was probably wiped of data from all sectors and then a new OS was installed to make the laptop operable.

c. Laptop Review cont'd: Although Bayer wiped clean the data from the Laptop computer, his efforts to destroy all remnants of his activities on this device were not 100% effective. In its forensic examination of this device JAK and GCI found remnants of files, which metadata included the following:

- Client Contact Sheet – Potential for RPI.xlsx
- Script Test RPI.xlsx
- Contact and password for RPI.xlsx
- RPI script.docx
- RPI NEW HIRE PAPERWORK
- Language and terms from what appears to be Bayer's new hire paperwork with RPI
- E-mail fragments of Bayer's work for RPI stating things like: "have a great morning TEAM RPI!!! REMINDER end each call with 'THANK YOU FOR YOUR TIME"

d. Desktop PC review: Although Bayer wiped clean the data from the Desktop PC that he used while employed by JAK and GCI, his efforts to destroy all remnants of his activities on this device were not 100% effective. In its forensic examination of this device JAK and GCI found remnants of files, which metadata included the following:

- RE: RPI NEW HIRE PAPERWORK - Inbox – Yahoo
- Language and terms from what appears to be Bayer's new hire paperwork with RPI

(*See* Affidavits of Brendan Sullivan and Peter Kandra, attached hereto as **Exhibits 5 and 6**).

34. In the weeks leading up to the end of his employment, Bayer e-mailed JAK's and GCI's confidential and trade secret information from his work e-mail to his personnel e-mail. (*Id.*).

35. On March 18, 2014, approximately 10 days prior to the voluntary termination of Bayer's employment, Bayer sent an e-mail message to his personal "Yahoo" e-mail address with a Zip file containing numerous documents (including personal documents).

36. Also on March 18, 2014, Bayer e-mailed to himself (to his work e-mail from his work e-mail) e-mails with several TSR speech scripts attached. JAK and GCI developed TSR speech scripts using their experience in the industry and knowledge of the applicable laws, rules and regulations related to telephone sales and solicitations. TSR speech scripts are scripts utilized by JAK and GCI for telephone sales and solicitations.

37. The timing of Bayer's e-mailing of TSR speech scripts to himself stands as highly suspect and indicates his intent to use such materials for purposes inconsistent with his obligations under his Employment Contract. Bayer sent these e-mails to himself, for no apparent reason, on the same day that he sent e-mails of personal items (the Zip file e-mail) to himself in anticipation of his leaving JAK and GCI. The reasonable conclusion to be drawn from these facts is that Bayer wanted to take not only his personal documents (the Zip file documents) but also JAK and GCI documents with him when he left the Company.

38. Bayer employed a practice whereby he sent and asked his subordinates to send copies of work-related e-mails to his personal email account. These emails often attached documents containing confidential, proprietary, and trade secret information including shift reports, production reports, and credit card sales reports.

39. JAK and GCI authorized Bayer to remotely access the Company's computer system while he remained employed by the Company. Bayer's sending of certain work related materials to his personal email account or his work email account on March 18, 2014 (as noted above) to be accessed remotely served no legitimate business purpose other than to utilize said materials in violation of his Employment Contract. Moreover, at no time did JAK or GCI authorize the wiping of the Company computers used by Bayer.

40. Despite the express terms of his employment contract, Bayer secured employment with RPI as its "Operations Manager" in the Parkersburg, WV area, in violation of the non-compete obligations found in the Employment Contract, and is currently assisting RPI with the opening and management of a call center located at 1002 E. State St. in Athens, Ohio, which call center is located within the thirty (30)-mile radius of JAK and GCI's call center located in Parkersburg, West Virginia. Upon information and belief, the call center is now up and running and competing with JAK/GCI. As to employee recruiting, RPI has placed a sign within three (3) miles of JAK's Parkersburg, WV, call center, seeking "Full Time and Part Time" job applicants, asking the applicants to call 740-249-2112 "Today!" (*See* photo attached hereto as **Exhibit 7**). A representative from JAK familiar with Bayer's voice called the number identified on this sign on September 30, 2014, and identified the voice on the recording to be Bayer's.

41. Despite the express terms of the Employment Contract, Bayer has contacted the following individuals currently employed by the Company at its Parkersburg, West Virginia call center: Allison Brown ("Brown") and Teresa Starkey ("Starkey"); and is inquiring of other individuals of possible contact information for JAK employees. (*See* **Exhibit 8** attached hereto).

42. Bayer's contacts with Brown and Starkey, and clear desire to reach out to other JAK employees, are, at least in part, for the purpose of soliciting them to work for RPI and conduct fundraising activities.

43. During the last week of December 2014, Plaintiffs learned of: (a) Bayer's continued and ongoing attempts (directly and indirectly) to recruit Plaintiffs' employees to go work for RPI at RPI's Athens, Ohio call center and (b) Bayer's intent and purpose in opening the Athens, Ohio call center for RPI, *e.g.*, to "shut down every JAK" call center, and to shut down Plaintiffs' Parkersburg, West Virginia call center in particular. (*See* **Exhibit 9** attached hereto).

44. As a result of the foregoing conduct of Bayer, JAK and GCI have suffered, and will continue to suffer, immediate and irreparable harm and injury. The exact extent, nature, and amount of such injury and potential injury are not ascertainable and may not be subject to precise calculation. Therefore, monetary damages alone cannot fully compensate JAK and GCI for Bayer's unlawful conduct. The damage to JAK and GCI may include, but is not limited to, lost customers, lost business opportunities, loss of employees and potential employees, and a disadvantaged market position.

45. JAK and GCI possess no adequate remedy at law, and, unless restrained by the Court, Bayer will continue his unlawful activities so as to irreparably damage and injure JAK and GCI. The harm to JAK and GCI, if such a restraint is not granted by the Court, outweighs the risk of harm to Bayer if such a restraint is granted. Moreover, the granting of such a restraint will not violate public policy.

46. All conditions precedent to bring this action have been performed, have occurred or have been excused or waived.

COUNT I

BREACH OF CONTRACT

47. JAK and GCI incorporate by reference the allegations contained in paragraphs 1 through 46 of this Verified Complaint as if fully set forth herein.

48. Bayer stands in violation of the "Anti-Piracy" (Employment Contract, ¶ 8.d.) and non-compete obligations (*id.*, ¶ 8.a.) set forth in the Employment Contract.

49. JAK's and GCI's confidential/proprietary information possesses trade secret status under the West Virginia Trade Secrets Act.

50. On information and belief, Bayer has retained possession of JAK's and GCI's Trade Secret and Confidential/Proprietary Information.

51. On information and belief, Bayer has breached the Employment Contract and violated the covenants contained therein by his misappropriation of JAK's and GCI's Trade Secret and Confidential/Proprietary Information.

52. As a result of the foregoing breaches of the Employment Contract by Bayer, JAK and GCI have suffered, and will continue to suffer, immediate and irreparable harm and injury. The exact extent, nature, and amount of such injury and potential injury are not ascertainable and may not be subject to precise calculation. Therefore, monetary damages alone cannot fully compensate JAK and GCI.

53. JAK and GCI are without an adequate remedy at law, and unless restrained by the Court, Bayer will continue to breach his obligations under the Employment Contract to JAK's and GCI's irreparable damage and injury. The threatened harm to JAK and GCI, if such a restraint is not granted by the Court, outweighs the risk of harm to Bayer if such restraint is granted. Moreover, the granting of such a restraint by the Court will not violate public policy.

WHEREFORE, Plaintiffs JAK and GCI, by counsel, request this Court to enter judgment in their favor and against Defendant Bayer, such that:

(A) Bayer be ordered to return JAK's and GCI's Trade Secret and Confidential/Proprietary Information, comply with the express terms of the Injunction and be prohibited from using, disclosing, or disseminating JAK's and GCI's Trade Secret and Confidential/Proprietary Information;

(B) They be awarded compensatory damages (including pre-judgment interest) in an amount to be proven at trial for said breaches, which amount is presently unknown to Plaintiffs but in good faith and reasonably believed to be in excess of $75,000;

(C) They be granted all appropriate preliminary and permanent injunctive relief, restraining and enjoining Bayer, and all persons in active concert or participation with him who receive actual notice of such order, from using any of JAK's and GCI's Trade Secret and Confidential/Proprietary Information for any purpose;

(D) All profits or proceeds received by Bayer, and those acting in concert with him as a result of his breaches of the Employment Contract, be placed in a constructive trust for the benefit of JAK and GCI; and

(E) They be awarded their attorneys' fees and other costs incurred herein and all appropriate relief pursuant to the Employment Contract.

COUNT II

CONVERSION

54. JAK and GCI hereby incorporate by reference the allegations contained in paragraphs 1 through 53 of this Verified Complaint as if fully set forth herein.

55. Ownership of the Trade Secret and Confidential/Proprietary Information copied and taken by Bayer remains with JAK and GCI.

56. On information and belief, Bayer has retained possession of JAK's and GCI's Trade Secret and Confidential/Proprietary Information.

57. JAK and GCI are entitled to recover their damages for Bayer's conversion of the Trade Secret and Confidential/Proprietary Information.

58. JAK and GCI are entitled to all the damages caused by Bayer's conversion, including interest, treble damages, attorneys' fees and costs.

WHEREFORE, JAK and GCI respectfully request the entry of judgment in their favor and against Bayer in an amount that will compensate JAK and GCI for their losses, which amount is presently unknown to Plaintiffs but in good faith and reasonably believed to be in excess of $75,000, for statutory damages including treble damages, attorneys' fees and costs, for all other damages as may be appropriate, and for all other just and proper relief.

COUNT III

MISAPPROPRIATION OF TRADE SECRETS

59. JAK and GCI hereby incorporate by reference the allegations contained in paragraphs 1 through 58 of this Verified Complaint as if fully set forth herein.

60. JAK's and GCI's Trade Secret and Confidential/Proprietary Information derive actual or potential independent economic value from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain value from their disclosure and use.

61. JAK and GCI have taken, and continue to take, reasonable efforts to maintain the confidentiality and secrecy of such information.

62. JAK's and GCI's Trade Secret and Confidential/Proprietary Information constitutes trade secrets pursuant to West Virginia Uniform Trade Secrets Act, W.Va. Code § 47-22-1 *et seq*.

63. Bayer gained knowledge of JAK's and GCI's Trade Secret and Confidential/Proprietary Information through his employment with JAK and GCI.

64. On information and belief, Bayer intentionally, wrongfully, and maliciously misappropriated JAK's and GCI's Trade Secret and Confidential/Proprietary Information.

65. A threat of ongoing misappropriation by Bayer exists.

66. As a result of the foregoing conduct of Bayer, JAK and GCI have suffered, and will continue to suffer, immediate and irreparable harm and injury. The exact extent, nature, and amount of such injury and potential injury are not ascertainable and may not be subject to precise calculation. Therefore, monetary damages alone cannot fully compensate JAK and GCI for Bayer's unlawful conduct.

67. JAK and GCI are without an adequate remedy at law, and, unless restrained by the Court, Bayer will continue his unlawful activities to JAK's and GCI's irreparable damage and injury.

68. The threatened harm to JAK and GCI, if such restraint is not granted by the Court, outweighs the risk of harm to Bayer if such a restraint is granted. Moreover, the granting of such a restraint by the Court will not violate public policy.

WHEREFORE, Plaintiffs, JAK and GCI, by counsel, request this Court to enter judgment in JAK and GCI's favor and against Defendant, Bayer, such that:

(A) They be granted all appropriate preliminary and permanent injunctive relief, restraining and enjoining Bayer, and all persons in active concert or participation with him who receive actual notice of such order, from using any of JAK's and GCI's Trade Secret and Confidential/Proprietary Information for any purpose;

(B) They be awarded damages to recover for the actual loss caused by the misappropriation, to recover for the unjust enrichment to Bayer caused by the misappropriation, and to recover a reasonable royalty;

(C) They be awarded exemplary damages pursuant to W. Va. Code § 47-22-3;

(D) They be awarded their reasonable attorneys' fees and other costs incurred herein pursuant to W. Va. Code § 47-22-4; and

(E) They be awarded all other appropriate relief.

COUNT IV

BREACH OF COMPUTER FRAUD & ABUSE ACT

69. JAK and GCI incorporate by reference the allegations contained in paragraphs 1 through 68 of this Verified Complaint as if fully set forth herein.

70. At all times relevant to this Verified Complaint, there was in existence a certain statute, to-wit: The Computer Fraud & Abuse Act, 18 U.S.C. § 1030, *et seq.* ("CFAA").

71. The CFAA provides a mechanism for redressing the harm that employers suffer from former employees who deleted computer files (and metadata) in the process of gathering information from the company in an effort to compete with the company.

72. The CFAA provides, in relevant part, as follows:

> Whoever … knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer; . . . shall be punished as provided in subsection (c) of this section. 18 U.S.C. § 1030(a)(5)(A).
>
> the term "protected computer" means a computer—
>
> * * *
>
> (B) which is used in or affecting interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States; . . .. 18 U.S.C. § 1030(e)(2)(B).
>
> (1) the term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device; . . .. 18 U.S.C. § 1030(e)(1).
>
> The punishment for an offense under subsection (a) or (b) of this section is— . . . (4)(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of— (I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least $5,000 in value[.] 18 U.S.C. § 1030(c)(4)(A)(i)(I)-(V)
>
> (g) Any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. . . .. 18 U.S.C. § 1030(g).

73. Before returning his Company-owned laptop to the Company, Bayer deleted all the data (including metadata) on the laptop, which data and metadata would have revealed to JAK and GCI Bayer's improper conduct both before he decided to quit his employment with JAK and GCI and after the same.

74. Bayer loaded into the laptop a secure-erasure program, designed, by writing over the deleted files, to prevent both their recovery and the recovery of what Bayer did with those files after placing them on the laptop but prior to the deletion.

75. JAK and GCI have no knowledge of, and no way of knowing, what files Bayer erased or what he did with them because of the steps that he used to erase said files from the laptop.

76. Bayer, as alleged herein, knowingly caused the transmission of a program, information, code or command, or otherwise accessed a protected computer, without authorization and as a result of such conduct, intentionally or recklessly caused damage to a protected computer within the meaning of the CFAA.

77. In that Bayer performed work for JAK and GCI in West Virginia and regularly and consistently utilized the laptop to communicate with the Company at JAK's headquarters in Georgia and to conduct business with JAK's and GCI's clients located in other states, Bayer used the laptop on behalf of JAK and GCI in interstate commerce or communication.

78. Bayer's destruction of the Company's laptop is a violation of both the criminal and civil provisions of the CFAA, pursuant to which Plaintiffs are entitled to damages and injunctive relief or other equitable relief.

79. Bayer's unlawful conduct has caused damages to Plaintiffs in an amount presently unknown to Plaintiffs but in good faith and reasonably believed to be aggregating in excess of $75,000.00.

80. Plaintiffs have no adequate remedy at law.

81. By his continuing conduct, Bayer has demonstrated his willingness to continue to engage in acts that violate the CFAA.

82. The injury to Plaintiffs is immediate and irreparable.

83. Plaintiffs have demonstrated that Bayer, unless restrained, would continue to engage in conduct that is alleged herein.

84. There is a likelihood that Plaintiffs will prevail on the merits in this action.

85. Should this Court grant injunctive relief to Plaintiffs, the burden on Bayer would be slight compared to the injury to Plaintiffs if it were not granted. No injury to Bayer would result from an order requiring him to comport his actions under the law.

86. The granting of an injunction will not disserve the public interest. Indeed, injunctive relief would accomplish the objectives of the CFAA.

WHEREFORE, Plaintiffs, JAK and GCI, by counsel, request this Court grant the following relief:

(A) Entry of a Preliminary Injunction, and, upon final disposition, entry of a Permanent Injunction, pursuant to Section (g) of the CFAA, against Bayer, enjoining him from engaging in acts and practices in violation of the CFAA;

(B) Entry of all appropriate preliminary and permanent injunctive relief, restraining and enjoining Bayer, and all persons in active concert or participation with him who receive actual notice of such order, from using any of JAK's and GCI's Trade Secret and Confidential/Proprietary Information for any purpose;

(C) Entry of all appropriate preliminary and permanent injunctive relief, ordering Bayer, and all persons in active concert or participation with him who receive actual notice of such order, to return to JAK and GCI all of their Trade Secret and Confidential/Proprietary Information, and prohibited Bayer, and all persons in active concert or participation with him who receive actual notice of such order, from using, disclosing, or disseminating JAK's and GCI's Trade Secret and Confidential/Proprietary Information;

(D) Judgment in favor of Plaintiffs, and against Bayer, for compensatory damages in an amount presently unknown to Plaintiffs, but in good faith and reasonably believed to be in excess of $75,000;

(E) An order awarding Plaintiffs their costs and attorney' fees; and,

(F) Such other and additional relief as this Court may deem appropriate.

VERIFICATION

I affirm under the penalties of perjury that the foregoing facts are true and accurate to the best of my knowledge and belief.

Dated: 1/5/15

JAK PRODUCTIONS, INC. and GROUP CONSULTANTS, INC.

By: J. Keller
JOHN KELLER
Their: President

Respectfully submitted,

JAK PRODUCTIONS, INC., and
GROUP CONSULTANTS, INC.

By: Spilman Thomas & Battle, PLLC

/s/ Richard M. Wallace

Richard M. Wallace (WV State Bar # 9980)
Kate Sturdivant Gibson (WV State Bar #11628)
300 Kanawha Boulevard East
Charleston, West Virginia 25301
Telephone: (304) 340-3800